

United States District Court
Central District of California

Brian Whitaker,
Plaintiff,

v.
ELC Beauty LLC,
Defendant.

Case No. 8:19-cv-00407-ODW (JDEx)

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS FOR FAILURE TO STATE
A CLAIM [12]**

I. INTRODUCTION

Defendant ELC Beauty LLC ("ELC") moves to dismiss Plaintiff Brian Whitaker's ("Whitaker") complaint for lack of subject matter jurisdiction under Federal Rule of Civil Procedure ("FRCP") 12(b)(1) and failure to state a claim under FRCP 12(b)(6). (Def.'s Mot. to Dismiss ("Mot."), ECF No. 12.) For the reasons below, ELC's Motion is **GRANTED**, and Whitaker is granted leave to amend his complaint.¹

II. BACKGROUND

Whitaker initiated this action on February 28, 2019, for violations of the Americans with Disabilities Act ("ADA") and a related state-law claim. (Compl., ECF

¹ After carefully considering the papers filed in support of the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 No. 1.) On April 24, 2019, ELC moved to dismiss Whitaker’s Complaint for lack of
2 subject matter jurisdiction and failure to state a claim. (*See generally* Mot.)

3 Whitaker is a California resident with a physical disability who is substantially
4 limited in his ability to walk and uses a wheelchair for mobility. (Compl. ¶ 1.) He
5 alleges that, in February 2019, he visited ELC, located at 3333 S. Bristol Street, Costa
6 Mesa, California, and that he encountered a transaction counter barrier inside ELC.
7 (Compl. ¶¶ 2, 8, 11–13.) Whitaker alleges that the transaction counter does not comply
8 with accessibility requirements under the ADA. (Compl. ¶¶ 22–23.)

9 In its Motion, ELC argues that this Court should dismiss Whitaker’s claim
10 because he lacks standing and fails to state a claim. (Mot. 1.) Specifically, ELC argues
11 three points: (1) Whitaker fails to adequately plead injury in fact as required to establish
12 standing; (2) Whitaker fails to plead the facts required to state a claim; (3) Whitaker
13 fails to advance a cognizable legal theory. (Mot. 1.)

14 III. LEGAL STANDARD

15 A Rule 12(b)(6) dismissal is proper only where there is either a “lack of a
16 cognizable legal theory” or “the absence of sufficient facts alleged under a cognizable
17 legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.1988). A
18 Rule 12(b)(6) motion tests the legal sufficiency of the claims made in the complaint.
19 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must contain “a short
20 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.
21 Civ. P. 8(a)(2). However, Plaintiff must also plead “enough facts to state a claim to
22 relief that is plausible on its face,” which requires that “the plaintiff plead factual content
23 that allows the court to draw the reasonable inference that the defendant is liable for the
24 misconduct alleged.” Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S.
25 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). On a Rule 12(b)(6)
26 motion, the Court must assume the truth of all factual allegations and must construe
27 them in the light most favorable to the nonmoving party. *Cahill v. Liberty Mut. Ins.*
28 *Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). Where a district court grants a motion to

1 dismiss, it should generally provide leave to amend unless it is clear the complaint could
2 not be saved by any amendment. *See* Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire*
3 *& Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

4 IV. DISCUSSION

5 A. Cognizable Legal Theory

6 “To prevail on a discrimination claim under Title III, a plaintiff must show that:
7 (1) he is disabled within the meaning of the ADA; (2) the defendant is a private entity
8 that owns, leases, or operates a place of public accommodation; and (3) the plaintiff was
9 denied public accommodations by the defendant because of his disability.” *Ariz. ex rel.*
10 *Goddard v. Harkins Amusement Enters.*, 603 F.3d 666, 670 (9th Cir. 2010) (citing
11 *Molksi v. M.J. Cable, Inc.*, 481 F.3d 724, 730 (9th Cir. 2007)). Further, if the plaintiff
12 fails to identify an architectural barrier under the ADA, it necessarily follows that the
13 Complaint fails to plead a cognizable legal theory under the ADA. *See Conservation*
14 *Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (“A district court’s dismissal for
15 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is proper” where
16 the Complaint lacks a cognizable legal theory.).

17 Here, the parties do no dispute that Whitaker is disabled, or that ELC owns or
18 operates a place of public accommodation. Rather, at issue is whether ELC’s “crowded
19 . . . transaction counters with merchandise and displays,” denied Whitaker a public
20 accommodation and constitutes an unlawful barrier under the ADA. (Pl.’s Opp’n to
21 Mot. (“Opp’n”) 3–4, ECF No. 15.) Whitaker only cursorily opposes ELC’s cognizable
22 legal theory argument. (*See generally* Opp’n.) Accordingly, the Court finds that the
23 sole deficiency that Whitaker alleges is that the placement of merchandise and displays
24 on the transaction counter violates the ADA Accessibility Guidelines (“ADAAG”) standards (the “2010 Standards”). (Opp’n 3–4 n. 11; *see* 28 C.F.R. § 36.104; 2010
26 Standards §§ 904.4, 904.4.1.)

27 Courts addressing this issue routinely find that the lack of clear space or the
28 placement of merchandise on transaction counters violates neither the 2010 Standards

1 nor the ADA. *Kong v. Mana Inv. Co.*, No. SA CV 18-01615-DOC (DFM), 2019 WL
2 3220027, at *3 (C.D. Cal. May 1, 2019) (“Nothing in the plain language of § 904.4.1 or
3 its exception suggests that any particular amount of ‘clear’ space on the surface of a
4 sales or service is required.”); *Johnson v. Starbucks Corp.*, No. CV 17-02454-WHA,
5 2019 WL 1427435, at *3 (N.D. Cal. Mar. 29, 2019) (“the inquiry into whether a sales
6 or service counter satisfies Section 904.4.1’s length requirement turns on the length of
7 the counter as built, not on the length of ‘clear’ counter space.”); *Johnson v. Starbucks*
8 *Corp.*, No. 5:13-CV-01414 HRL, 2015 WL 877493, at *4 (N.D. Cal. Feb. 27, 2015).
9 Whitaker alleges no other deficiencies with the transaction counter that constitute an
10 unlawful barrier. Accordingly, Whitaker has failed to put forth a cognizable legal
11 theory. *See Conservation Force*, 646 F.3d at 1242 (dismissal for failure to state a claim
12 under Fed. R. Civ. P. 12(b)(6) is proper where, as here, the Complaint lacks a cognizable
13 legal theory).

14 Consequently, the Court finds Plaintiff has failed to state a claim in accordance
15 with Federal Rule of Civil Procedure 12(b)(6). Therefore, Defendant’s motion to
16 dismiss based on lack of cognizable legal theory is **GRANTED**.

17 V. CONCLUSION

18 For the reasons discussed above, ELC’s Motion to Dismiss is **GRANTED**.
19 However, the Court does not find that amendment would be futile. It is conceivable,
20 according to the facts of the case, that Whitaker could state a cognizable legal theory.
21 Accordingly, the Court grants Whitaker leave to amend his Complaint and refile no
22 later than 14 days from the date of this order.

23
24 **IT IS SO ORDERED.**

25
26 September 25, 2019

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OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE